

★ JUN 17 2011 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

----- X
ALEXANDER MORALES,

Petitioner,

-against-

DALE ARTUS, Supt., Clinton
Correctional Facility,

Respondent.
----- X

10-CV-2478 (ARR)

NOT FOR ELECTRONIC
OR PRINT PUBLICATION

OPINION & ORDER

ROSS, United States District Judge:

On May 27, 2010, pro se petitioner Alexander Morales filed a petition for a writ of habeas corpus in this court. In 2006, petitioner was convicted in New York Supreme Court, Kings County, of Rape in First Degree (N.Y. Penal Law § 130.35[1]) and other crimes related to a sexual assault that occurred in 2004. Petitioner appealed his conviction to the New York Appellate Division, Second Department, arguing that the trial court should have suppressed certain physical evidence and identification testimony because it was obtained in violation of the Fourth Amendment. On January 27, 2009, the Appellate Division affirmed petitioner's conviction. On April 16, 2009, the New York Court of Appeals denied petitioner's application for leave to appeal.

In his habeas corpus petition, petitioner claims that the Second Department erred in upholding the trial court's determination that the physical evidence and identification testimony were not obtained in violation of the Fourth Amendment. The court has reviewed the record in this case. The record reveals that petitioner had a full and fair hearing on this issue before the trial court and that the trial court's findings of fact were sufficient to enable the Second

Department to consider petitioner's claim fully and fairly on appeal. Accordingly, this court is barred from considering petitioner's Fourth Amendment claim. Stone v. Powell, 428 U.S. 465 (1976); Capellan v. Riley, 975 F.2d 67, 70 (2d Cir. 1992).¹ Petitioner's petition for a writ of habeas corpus is denied.

Because petitioner has failed to make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), the court declines to issue a certificate of appealability. In addition, this court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith. Coppedge v. United States, 369 U.S. 438, 444-445 (1962). The Clerk of Court is directed to enter judgment accordingly.

SO ORDERED.

/Signed by Judge Ross/

Allyne R. Ross
United States District Judge

Dated: June 17, 2011
Brooklyn, New York

¹ To the extent that petitioner argues in his petition that he is entitled to habeas corpus relief because he was not read his Miranda rights, that claim is procedurally barred because petitioner could have, but did not, raise that claim on appeal to the Second Department. See Carvajal v. Artus, 633 F.3d 95, 105-106 (2d Cir. 2011); Washington v. James 996 F.2d 1442, 1448 (2d Cir. 1993).

SERVICE LIST:

Plaintiff:

Alexander Morales

06-A-6895

Clinton Correctional Facility

P.O. Box 2001

Dannemora, NY 12929